

MOTION UNDER 18 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	EASTERN DISTRICT OF MISSOURI
Name of Movant	MAR 17 2010	Prisoner No.	Case No.
BILLY GENE RIPPEE		22906-044	
Place of Confinement			
FCC FORREST CITY-MEDICAL UNIT, P.O. BOX 3000; FORREST CITY, AR 72336			
UNITED STATES OF AMERICA		V. BILLY GENE RIPPEE (name under which convicted)	

## MOTION

- Name and location of court which entered the judgment of conviction under attack  
United States District Court, Eastern District of Missouri,  
Southeastern Division
- Date of judgment of conviction November 14, 2006
- Length of sentence 327 Months
- Nature of offense involved (all counts)  
Felon In Possession of a Firearm. A violation of 18 U.S.C. § 922 (g)(1)
- What was your plea? (Check one)
 

(a) Not guilty	<input checked="" type="checkbox"/>
(b) Guilty	<input type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment give details

N/A

- If you pleaded not guilty, what kind of trial did you have? (Check one)
 

(a) Jury	<input checked="" type="checkbox"/>
(b) Judge only	<input type="checkbox"/>
- Did you testify at the trial?  
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court The United States Court of Appeals for the Eighth Circuit

(b) Result Affirmed

(c) Date of result Appeal denied January 28, 2009. Rehearing denied March 24, 2009.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐ N/A

(5) Result N/A

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information: N/A

(1) Name of court N/A

(2) Name of proceeding N/A

(3) Grounds raised N/A

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐ N/A

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐ N/A

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not

N/A

- 12 State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (i) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Defense Counsel's failure to investigate or introduce exculpatory evidence constituted deficient performance.

Supporting FACTS (state *briefly* without citing cases or law):

Trial Counsel was ineffective for failure to investigate the case. Counsel failed to fulfill his duty to investigate petitioner's most important defense.

B. Ground two: Statements given by petitioner were not voluntary based on petitioner's mental health at the time he was taken into custody.

Supporting FACTS (state *briefly* without citing cases or law):

The petitioner was suffering from mental health problems at the time he was taken into custody.

C. Ground three: Counsel failed to obtain medical records and present a diminished capacity defense or to present evidence of petitioner's mental impairments at sentencing.

Supporting FACTS (state *briefly* without citing cases or law):

Petitioner's trial counsel provided constitutionally ineffective assistance in failing to investigate and present evidence of petitioner's diminished mental capacity at the time of offense.

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D. Ground four: Counsel failed to ask the court to instruct the jury on the defense of diminished capacity at the time of the offense.

Supporting FACTS (state *briefly* without citing cases or law):  
Counsel was ineffective because he failed to show the court the need for a diminished capacity instruction based on petitioner's mental health at the time of the offense.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them.

Ineffective assistance of counsel

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing N/A

(b) At arraignment and plea N/A

(c) At trial N/A

(d) At sentencing N/A

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(c) On appeal N/A

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3-12-2010  
Date

Billy Gene Ryzee  
Signature of Movant